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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

April 19, 1993

MEMORANDUM

Subject: Colbert Landfill Superfund Site, Consent Decree
Billing for Past Costs

From: Neil Thompson, Project Manager *net*

To: Site File

There was some confusion about the payment of past costs for the Colbert Landfill Superfund site. Because of the confusion, Spokane County had not paid their bill by the due date. This lead to some actions by the EPA finance office which could have had a major impact on Spokane County had it not been resolved.

Background

Spokane County is considered a municipal government and is an extension of the State of Washington government. Spokane County is a PRP and is implementing the cleanup at the Colbert Landfill site.

The Colbert Landfill Consent Decree, entered on February 28, 1989, states that Spokane County shall pay past costs within four years from the date of entry. All of the past costs were calculated during the Consent Decree negotiations and included costs prior to September 30, 1988. According to EPA, Finance, the Consent Decree is considered the billing document and no bill needed to be sent out for the past costs. All costs associated with the site after that date would be billed annually as oversight costs.

The settlement agreement of payment within four years was to allow the county to obtain funds and easily meet their financial obligation. Fours years was selected based on the RIFS estimate that the remedial action would be underway and construction costs could be accurately budgeted.

After the Consent Decree was in effect, EPA sent the cost documentation to Spokane County for cost recovery purposes. EPA sent a bill for past costs to Spokane County with supporting documentation dated August 18, 1989 (Neuroth). **In this letter it stated that the past cost payment was due July 24, 1993.** This date is inconsistent with the information in the Consent Decree (four years from entry date).

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Issue

EPA had not received the past cost payment from Spokane County by February 28 1993, as stated in the Consent Decree. In early March 1993, messages were sent from Finance to Sharon Eng, Superfund, about the status of this receivable matter. Ms. Eng forwarded the messages to the RPM as information. During March the RPM clarified the issue. Contact was made on March 23 with Spokane County, Mr. Dennis Scott, Director of Public Works, about this past due payment. It was first thought that no bill had been sent and when one is sent the County would pay it.

On March 24, 1993, Mr. Joe Penwell contacted the RPM directly indicating that EPA was prepared to send Spokane County a new bill for the past due costs plus interest calculated from September 30, 1988. The interest alone was over \$200,000.

Resolution/Action Taken

RPM indicated that Spokane County would pay the Consent Decree amount due if they received a "bill." EPA Finance Office (Penwell) prepared an "original bill" which was sent to Spokane County on March 24, 1993, by the RPM. The purpose of this action was twofold.

The new "original bill" provided Spokane County with a current bill and an address for payment. (There was no payment address in the Consent Decree.) Secondly, Spokane County could make the past due payment prior to EPA sending an overdue bill with any new interest included.

Payment of the past costs bill was made by Spokane County on March 25, 1993, and sent to the EPA box number in Pittsburgh, PA.

As of March 31, 1993, EPA has not sent any overdue billing to Spokane County regarding the past costs for the Colbert Landfill Superfund site.

Rational

Because of the inconsistent dates and the resulting misunderstanding, the rational for obtaining the County's payment prior to the new EPA billing was to protect the County from paying interest on the past due bill. During negotiations for the Consent Decree, it was settled that EPA would not collect any more interest on the past cost account after September 30, 1988. The past cost account was a fixed and determined number with provision for payment within four years.

During the discussions in the EPA Finance Office and the RPM, it was determined that federal regulations required that interest on the past cost bill accrue from the 1988 Consent Decree due date and not the payment due date in 1993; hence, the large amount of interest that would be added to the overdue bill.

In keeping with the intent of the negotiated settlement in the Consent Decree, the RPM and Finance Officer felt that if the County could pay their bill before the overdue bill was sent that there would be good cause for not sending the overdue bill.

Problems Identified

Discussions with Spokane County on March 31, 1993, brought to light additional information that should be corrected for future collection actions.

- o EPA sent a letter to Spokane County dated, September 22, 1988 (Goodstein) stating that the past costs through September 30, 1988, was the total amount that would be due. This may be inconsistent with the information that EPA would add interest to the overdue bill.
- o In normal business operations, a bill is sent to the payee prior to the payment date, usually 30 days not 3½ years early. It may not be required to send a bill with Consent Decree actions, but a bill payable in 30 days is a usual business practice. In this case a bill with a different payment date than the Consent Decree was sent which further clouds the issue.
- o Some clarification between an EPA attorney letter about fixing costs including all interest that is sent and then finding out that additional interest could possibly be added based on an old date not just from the "past due date." The difference in this case is between prejudgment interest often discussed during negotiations and past due interest on bills that are not paid on time.
- o Some attention to interest payments and billing dates in consent decree type documents since they are the billing vehicle.